SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

# No. 559

■

DAISY LARGENT, *Appellant*

*v.*

THE STATE OF TEXAS, *Appellee*

■

APPEAL FROM THE COUNTY COURT OF LAMAR COUNTY, TEXAS

## APPELLANT'S BRIEF

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## Opinions Below

There was no opinion written and there is none reported by the court below in this case.

## Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statutes could be received as a matter of right on writ of error.

## Timeliness

The judgment of the state court of last resort in this controversy was rendered on November 2, 1942. (R. 49) The judgment of said highest court in which a decision could be had in the controversy became final on such date. The time for taking an appeal from such judgment expires February 2, 1943. The appeal is taken within such time.

## County Court is the Court of Last Resort in This Cause

This cause was tried de novo in the County Court of Lamar County, Texas, and the fine assessed was $100 and costs. (R. 49, 52) Article 53 of the Code of Criminal Procedure of Texas denies further appeal to the Court of Criminal Appeals of Texas from a judgment in a case of this kind unless the fine imposed *exceeds* $100 and costs.

Therefore the trial court was the highest court in Texas in which a decision could be had in this controversy. *Schneider* v. *State*, 308 U. S. 147, 154; *Edwards* v. *California*, 314 U. S. 160, 171-172; *Kentucky* v. *Powers*, 201 U. S. 1, 37-39; *Grovey* v. *Townsend*, 295 U. S. 45.

## The Statute

The legislation, the constitutionality and validity of which as construed and applied to appellant is here drawn in question, is an ordinance of the City of Paris, known as Ordinance No. 612 which reads as follows:

> "Section 1: From and after the passage of this ordinance it shall be unlawful for any person, firm or corporation to solicit orders for books, wares, merchandise or any household article of any description whatsoever within the residence portion of the City

of Paris, or to sell books, wares, merchandise or any household article of any description whatsoever within the residence district of the City of Paris, or to canvass, take census without first filing an application in writing with the Mayor and obtaining a permit, which said application shall state the character of the goods, wares or merchandise intended to be sold or the nature of the canvass to be made, or the census to be taken, and by what authority. The application shall also state the name of the party desiring the permit, his permanent street address and number while in the city and if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation.

"Section 2: The issuance of such permit by the Mayor shall not confer upon the holder thereof any rights to enter any residence contrary to the wishes of the owner or occupant of same and the holder of any such permit shall be respectful and considerate in dealing with the occupants of the residences and on complaint of any person this permit may be revoked and canceled by the Mayor.

"Section 3: The issuance of this permit shall not be held to confer any right on the holder thereof to peddle or sell merchandise without first obtaining a peddlers license and paying the fee therefor.

"Section 4: Any person, firm or corporation violating any or all of the provisions of this ordinance or who attempts to solicit for the sale of books, wares, merchandise or any household article whatsoever or to sell any of the same or to canvass or to take census within the residence district of the City of Paris without first obtaining a permit from the Mayor shall be

deemed guilty of a misdemeanor and on conviction thereof in Corporation Court, be fined in any sum not less than $5.00 or more than $200.00."

The entire text of the above ordinance appears in the record. R. 8-10, 50-52.

## Statement

Appellant is a native citizen of the United States of America. (R. 36) She is a widow of a veteran of the first *world war* and for her and her four children's support and maintenance she depends entirely upon a pension received from the federal government. (R. 29) From the modest allowance thus received she maintains a home and cares for several minor children. R. 29.

Appellant is an ordained minister of Jehovah God and duly authorized representative of the Watchtower Bible and Tract Society, a charitable corporation organized under the New York membership corporations law. The sole business of the corporation is to preach the gospel of God's kingdom by printing and distributing literature containing printed sermons on Bible subjects relating to present-day world events. Such work is carried on throughout the entire earth. The corporation makes and distributes to its representatives and ordained ministers the books, pamphlets and literature at *less than cost price* and operates on a yearly deficit which is taken care of by voluntary contributions of its members. Such Society is used by Jehovah's witnesses to carry on their work in an organized and orderly manner. Such Society directs the work of the defendant, who was sent by it to preach throughout the entire city of Paris. R. 18, 33.

Appellant is ordained or authorized as a minister primarily by Jehovah God according to the Scriptures. Isaiah 61:1, 2 is relied on, to wit, "The spirit of Jehovah

God is upon me; because Jehovah hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of Jehovah, and the day of vengeance of our God; to comfort all that mourn." The Watchtower Society issues to its authorized agents, ordained ministers of Jehovah God, a certificate of identification and ordination (Exhibit 9, R. 33) proving that it is the Scriptural duty of each to preach in the manner Christ Jesus and His apostles did. Acts 20:20 is cited on the card, and says: "And how I have taught you publicly, and from house to house." Also Mark 16:15, which says: "Go ye into all the world and preach the gospel to every creature." Mark 6:6, which states: "And he went round about the villages, teaching." Luke 8:1, stating: "And it came to pass afterward, that he went throughout every city and village, preaching and shewing the glad tidings of the kingdom of God; and the twelve were with him." Matthew 10:7, 12: "And as ye go, preach, saying, The kingdom of heaven is at hand. And when ye come into an house, salute it." R. 33, 34, 38.

Jehovah's witnesses get their name from Jehovah God as given them through the Scriptures: "Ye are my witnesses, saith the Lord, that I am God." (Isaiah 43:10, 12) See also Isaiah 44:8. Jesus said: "For this cause came I into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice." Jehovah's witnesses and all true followers of Christ must do likewise and go from house to house and teach publicly as commanded in 1 Peter 2:9, 21. R. 33, 34.

Every person who is in a covenant with Jehovah is duty-bound to obey the law of Almighty God which requires that he follow in the footsteps of His Son, Christ Jesus. (Psalm 40:8; 1 Peter 2:9, 21) Jesus Christ said: "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) It is written that He taught pub-

licly in the market places, upon the streets and from house to house, as did also His apostles. (Mark 6:6; Luke 8:1; 13:26; Acts 20:20; Proverbs 1:20, 21) A minister of the gospel who follows in the footsteps of Christ Jesus must be a witness for Jehovah, the Almighty God.—Isaiah 43:10-12; 44:8. R. 27, 38, 34-35.

The form of preaching today by the "recognized" religious clergy is much different from that outlined in the Bible. Large cathedrals and so-called "churches" have been set up throughout all the countries of the world, to which places the preachers ask their congregations to come so that the clergy might talk to them. This is a change from the method employed by Jesus and His apostles, as aforesaid. They did not build temples of stone, but rather went from place to place and preached wherever they had opportunity. It is true the apostles came together and met in an upper room to study with the Lord Jesus when in Jerusalem. The society, assembly or congregation formed after Christ's resurrection came together in halls or some meeting place or at homes and studied the written Word of God. But all of these were commissioned by the Lord Jesus to preach the gospel of God's Kingdom publicly and from house to house, as set out in the above scriptures. While Jehovah's witnesses have and use auditoriums and other public assembly places, inviting the public to attend and hear important speeches, they also have regular meeting halls and homes in which they gather and invite the people to come for careful study of the Bible. At the same time each individual claiming to be a servant and witness for the Most High goes from place to place about each city and village proclaiming the message of the Kingdom, so that those who have not heard may have the opportunity of hearing. R. 11-18, 29-36.

The record shows that this is not only the scriptural method of preaching but the most practical method of reaching all the people; that the religious census establishes that the vast majority of people in the United States

do not belong to a "church" or do not attend religious services of any kind; that, for various reasons, it is impossible to persuade all the people to attend the religious institutions to listen to sermons of the clergy; that Jehovah's witnesses do not expect to get all the people to attend their meeting places; therefore Jehovah's witnesses must take the message to the people in their homes so that each and every person may have the opportunity of receiving same. R. 15-18, 31-34.

Although she is one of Jehovah's witnesses and engages in preaching the gospel from house to house in the City of Paris by means of distributing literature, appellant by so doing does not derive any income or pecuniary profit but even contributes part of her own allowance to such work by giving away free of charge many books and booklets explaining the Bible and by distributing books which cost more than the equivalent of contributions she receives toward the work. R. 17-19, 22, 24-27, 29-34.

The record fails to show that appellant made a profit or sold anything to anybody in Paris, Texas. On one occasion during a special campaign she distributed three bound books of 375 pages each, entitled respectively *Deliverance, Government* and *Enemies*, each costing twenty cents to publish, and she received contributions totaling thirty-five cents. (R. 31) The record shows that on other occasions she distributed the literature and because the people did not offer her contributions she placed the greater part of the literature distributed without any contribution or at a total monetary loss to her. R. 32.

At the time of her arrest and trial no evidence whatever was offered or introduced showing that appellant was engaged in a commercial venture. (R. 14-45) When arrested by officer Taylor she was at the home of a friendly person who was interested in the literature and the Bible. The officer came into the home and arrested her without a complaint or request from the lady of the house. R. 41, 45-46.

The record establishes the fact that the city officials

have persecuted this poor appellant and her son and other of Jehovah's witnesses by arresting them constantly under this and other unconstitutional ordinances. Appellant has spent 27 days in jail all told, without an adjudication of her rights or a discharge of the sentences imposed against her. R. 33, 47-48.

Appellant's principal and primary object in carrying on said work was that she wanted to be of service to humanity by bringing to them the Word of God by distributing the literature, which is her way of worship. This she did without any motive for selfish pecuniary return. R. 32, 43-45.

When appellant came to a house, if anyone came to the door he was told that she represented the Watchtower Bible & Tract Society as one of Jehovah's witnesses. The person was told that it was desired to present a very important message of "The Kingdom" by means of a recorded phonograph talk. If the person permitted, the message was presented. (R. 16, 18, 29, 31-35) It described the book entitled *Children* (Appellant's Exh. 7) as containing a message relating to present-day current world events. All Bible testimony and the physical facts show that the rule of wickedness is about to come to a complete end and that such will be followed by a rule of righteousness. God has now made it possible for those who desire good things to learn just how and when such righteous rule will come into full control. Those great and comforting truths found in the Bible are set forth in a book recently published, and which book is entitled "Children". That book contains instructions for all who would be the children and subjects of the great Lord and King, Christ Jesus. Both the parents and their children find in that book the facts that will bring joy to them now and which truths now make the immediate future appear very bright. Those truths enable readers to understand, learn how to become children of the higher powers, the Almighty God and Christ Jesus, and how they may dwell and enjoy life under the righteous powers for ever. While the name of the book is "Children", it is

for parents and children as well. It shows how the parents can bring up their children in the right way and how the parents and children can at all times be of mutual benefit to each other. R. 31-32.

At the conclusion of the playing of the record the book *Children* was presented to the householder for examination and offered to him. If the person called on desired to have the book he could and was given the opportunity to contribute twenty-five cents toward the benevolent work done by appellant. (R. 28-29) Should the person contribute twenty-five cents or any less sum a booklet entitled *Hope* (R. 32, Appellant's Exhibit 8) was given without additional contribution. Sometimes if the person did not have any money but expressed a desire to have the book it was left free of charge. In every instance if householder did not have the money the booklet *Hope* was left on whatever contribution could be made, usually the cost of the booklet, but if they had no money to contribute it was left free upon condition that it be studied. R. 25, 31-33.

Appellant did not force herself upon the people nor did she play the phonograph record at homes where the people objected or did not consent to listen. If the person called on did not want to hear the phonograph but was interested appellant always presented the *testimony card*, which took the place of the introduction by phonograph, and explained the work and the purpose of the visit, including a brief description of the book *Children*. If the person was not interested, appellant would pass on quietly to the next house. Appellant never provoked an argument or controversy with another because of his religious views. R. 32-33, 41, 44.

The books and pamphlets are used by appellant as a substitute for oral sermons. When left they can be studied by the people in the quiet of their homes along with their Bible. This way saves the time of the preacher as well as that of the householder and enables the one receiving the literature to study it carefully with the Bible. R. 31, 15-18, 25.

An examination of the books and booklets shows that they relate exclusively to a plain and simple explanation of Bible prophecies. They show how the prophetic dramas recorded in the Bible are now being fulfilled and how they relate to current events and present-day world conditions. The names of some plainly show that they relate to an analysis or discussion of such present events under the critical and searching light of the recorded Word of God. The literature shows that the present-day conflict between the nations is foretold in the Bible together with the result thereof. Present-day events are cited as circumstantial evidence of the near establishment of God's kingdom, The Theocracy, on earth, as mankind's only hope for relief from the suffering that is sure to come with the devastating scourge of totalitarian aggression now overrunning the earth. It points out clearly that before that kingdom is completely established Jehovah, the Almighty God, will destroy Satan and his organization and present-day governments, consisting of political, commercial and ecclesiastical elements that oppressively rule over the people in all nations. "And in the days of these [totalitarian] kings shall the God of heaven set up a kingdom which shall never be destroyed; and the kingdom shall not be left to other people, but it shall break in pieces and consume all these kingdoms, and it shall stand for ever."—Daniel 2:44; Matthew 24:14. R. 38-40, 25, 27-28.

The literature therefore contains written elaboration upon the oral or recorded phonograph message that was first presented to the people by appellant.

The work thus done by Jehovah's witnesses is a charitable and benevolent work for the benefit of the people and in the public interest and not for private pecuniary gain of appellant. She did not sell or bargain with householders in the sense that peddlers and hawkers do. She merely presented the message or literature to the people as a witness or testimony to them concerning the Kingdom as the only hope and warned them to take steps to avoid the great

catastrophe at Armageddon just ahead in the immediate future. R. 36, 42, 26-27, 25, 14-15, 12.

Appellant admittedly did not apply for or receive a permit or license, or register as is required of commercial retailers of goods, wares and merchandise. Appellant contended that to do so would be an insult to Almighty God, who permits and directs her activity through His Word, the Bible; and that should she so apply it would be an act of disobedience resulting in her everlasting destruction at the hand of Almighty God. The demand by the prosecuting attorney that she comply with the requirement is claimed to be contrary to the law of God and the Constitution, and in excess of terms of the ordinance itself. Therefore, as to such demand the appellant states in the words of the apostle, "We ought to obey God rather than men." (Acts 5:29) She, however, obeys all laws of the land that do not conflict with the law of Almighty God which her covenant or unbreakable agreement requires that she must comply with at all times under all conditions and which covenant cannot be changed by anything, not even death. R. 38-39.

Appellant explained that she sincerely believed what she preached and considered that her entire life must be devoted to this charitable work which she carried on; that she did not do this because of selfish motive but solely because she believed that it was her God-given duty to carry this message to the people in this manner lest they die. In Ezekiel 3:17-19 it is stated: "Son of man, I have made thee a watchman unto the house of Israel: therefore hear the word at my mouth, and give them warning from me. When I say unto the wicked, Thou shalt surely die; and thou givest him not warning, nor speakest to warn the wicked from his wicked way, to save his life; the same wicked man shall die in his iniquity; but his blood will I require at thine hand." R. 39, 41, 42, 44, 18.

## History of Proceedings and Federal Questions Raised Below

### CORPORATION COURT PROCEEDINGS

Appellant was charged by complaint in the Corporation Court of Paris, Texas, with an alleged violation of the above described ordinance because she did not have a permit required thereby. (R. 1) Among other things the Complaint charged that appellant sold books from house to house in the residential district without applying for or obtaining a permit required by said ordinance. (R. 1) Upon trial in the Corporation Court appellant urged a motion to quash on the ground that the ordinance was unconstitutional. (R. 2-3) Appellant was found guilty as charged in the complaint filed in the corporation court and duly appealed from the judgment of said court by filing a bond. R. 3.

### LAMAR COUNTY COURT PROCEEDINGS

The trial in the County Court of Lamar County was *de novo* and evidence was given entirely anew. (R. 52) In the time and manner required by law appellant duly filed her motion to quash the complaint in which appellant attacked the ordinance because it was unreasonable, arbitrary and in excess of the police power, provided for unlimited exercise of arbitrary discretion on the part of the Mayor, and also on its face and as construed and applied, because it abridges appellant's rights of freedoms of speech, press and of worship of Almighty God according to the dictates of conscience, all contrary to the First and Fourteenth Amendments to the United States Constitution. (R. 3, 4) The motion was overruled and appellant excepted. (R. 5) A final judgment convicting the appellant was rendered and entered by the County Court and thereby appellant was fined $100 and costs. (R. 49) Before the court rendered the judgment, and at the close of all the evidence,

appellant duly filed and presented her motion for a judgment and a finding of not guilty for and on account of each of the above reasons urged in the motion to quash. The motion for a judgment was denied and appellant excepted. (R. 5, 7, 47) In open court and in the manner required by law appellant excepted to the final judgment and gave notice of appeal to the United States Supreme Court. R. 7, 48.

The County Court of Lamar County, as well as the Corporation Court, duly passed upon each of said federal questions or assignments attacking the validity of the ordinance and said court held it valid and constitutional, both on its face and as applied and held that the First and Fourteenth Amendments to the United States Constitution had not been violated in applying the ordinance to activity of appellant. R. 3-6, 7, 47, 49.

In the petition for appeal and the assignments of error filed with the jurisdictional statement, appellant complains of the judgment of the County Court of Lamar County, Texas, for and on account of each of the grounds set forth in her motions to quash and for a judgment of acquittal filed in said court. R. 50-54.

## Specification of Errors to be Urged

The County Court of Lamar County, Texas, committed reversible error in overruling the aforesaid motions and in rendering judgment because the court should have held that—

(1) The ordinance in question, both on its face and as construed and applied to appellant, is violative of the Federal Constitution in that it abridges and provides for censorship of appellant's freedoms of speech, press, and worship of ALMIGHTY GOD as by Him commanded and according to dictates of her conscience, all contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The ordinance in question is void on its face because by its terms it is in excess of the police power of the State of Texas and of the City of Paris, and is unreasonable and arbitrary in the means employed which have no reasonable relation to the ends aimed for, nor to the police powers of the state; and by reason thereof it violates the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

(3) The ordinance is void on its face and as applied because it confers arbitrary and discriminatory powers upon the mayor of the City of Paris in that there is no instruction or limitation upon the exercise of his unlimited discretion conferred in the Mayor to grant or refuse permits that may be issued under the ordinance. Therefore it deprives appellant of her liberty and property without due process of law and equal protection of the laws, contrary to the Constitution of Texas and the Fourteenth Amendment to the United States Constitution.

## Points for Argument

### ONE

**This court should hold that the ordinance is void and unconstitutional as construed and applied to appellant's activity because it abridges and censors the exercise by appellant of the right of freedom to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution.**

### TWO

**This court should hold that the ordinance is void and unconstitutional on its face and as construed and applied to appellant's activity because it abridges and censors the exercise by appellant of the rights of freedom of the press and of speech, contrary to the First and Fourteenth Amendments to the United States Constitution.**

### THREE

**This court should hold that the ordinance is void and unconstitutional on its face and as construed by the court below because it confers arbitrary, unlimited and discriminatory power and broad discretion upon the Mayor of the City of Paris to refuse or grant permits under the ordinance, thereby allowing the denial of liberty and property contrary to the Fourteenth Amendment to the United States Constitution.**

**FOUR**

**This court should hold that under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)] the appeal provided for therein from a final judgment of the highest court of Texas in which a decision can be had cannot be refused review by this court until application for writ of habeas corpus is presented and refused by some higher court of Texas.**

**FIVE**

**This court should hold that under the law and practice of Texas there was not and is not an opportunity for further full review of the judgment in a higher court of Texas by way of writ of habeas corpus or other proceedings.**

## Summary of Argument

The ordinance makes unlawful the calling from house to house in the City of Paris for the purpose of soliciting orders or selling "books, wares, merchandise or any household article" without first filing an application in writing with the Mayor and obtaining a permit. The applicant is required to show the kind of goods intended to be sold and the nature of the canvass to be made, and give the name of the person desiring the permit.

The ordinance does not place the duty upon the Mayor to issue the permit. It grants full discretion to the Mayor to refuse without just cause or excuse. It provides: "If after investigation the Mayor deems it proper or advisable *he may issue* a written permit." The ordinance contemplates a thorough, independent investigation by the

Mayor. It says: "which permit shall state on its face that it has been issued after a thorough investigation."

The unbridled and unlimited authority to revoke the permit is granted the Mayor without just cause or excuse. Section 2 provides: "on complaint of any person this permit may be revoked and canceled by the Mayor." A fine of from $5 to $200 may be imposed for each violation.

On its face the ordinance does not abridge freedom of worship, but as it has been misused and misapplied to the preaching activity of appellant it is unconstitutional to the extent to which it permits appellant to be convicted for her proper and lawful worship of Almighty God Jehovah. This identical activity has been declared by this court to be worship within the protection of the First and Fourteenth Amendments. *Cantwell* v. *Connecticut,* 310 U. S. 296. The ordinance contains the same type of censorship which was declared unconstitutional in the *Cantwell* case on the grounds that such statute was an abridgment of freedom of worship of Almighty God. The *Cantwell* case controls here.

Both on its face and as construed and applied the ordinance abridges the appellant's right of freedom of speech and of the press contrary to the First and Fourteenth Amendment. The censorial provisions of this ordinance are identical with those declared invalid in the cases of *Schneider* v. *State,* 308 U. S. 147, and *Lovell* v. *Griffin,* 303 U. S. 444. The holding in the case at bar conflicts with those two cases.

The provisions of the Judicial Code granting *appeal* as a matter of right in this case makes immaterial the question as to whether the judgment is subject to full review by habeas corpus proceedings in a higher court of Texas. Moreover the latest decisions do not permit a *full* review of the judgment by habeas corpus in the Texas courts.

## ARGUMENT

## ONE

**This court should hold that the ordinance is void and unconstitutional as construed and applied to appellant's activity because it abridges and censors the exercise by appellant of the right of freedom to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution.**

Freedom to worship ALMIGHTY GOD according to dictates of one's own conscience and as commanded by the Creator in His written Word is one of the rights secured by the Fourteenth Amendment against abridgment by the state. *Cantwell* v. *Connecticut*, 310 U. S. 296.

The undisputed evidence is that appellant was and is an ordained minister of Jehovah God, and that her *way* of worshiping Almighty God is to preach the gospel from house to house and on the streets by distributing literature explaining God-given prophecies of the Bible.

Preaching of the gospel by appellant *in this manner* is not for the private, personal benefit of the individual so preaching, nor for the benevolent corporation printing the literature distributed by said individual. On the contrary, the purpose, aim and effect of appellant's dissemination of such information through distributing said literature is to enlighten and benefit persons willing to receive and study that literature.

Freedom of conscience, freedom of worship and "religious" liberty are not limited to right of establishment and maintenance of the various denominations. The early struggles in this land of *freedom of worship* were largely centered upon the right to hold public assemblies and for groups of individuals to act unitedly according to their understanding of God-given commands contained in the Bible, contrary to the prevailing religion of the state. That

battle was fought 150 years ago, and today in these United States over two hundred religious denominations act freely, unhampered by censorship or restriction. But that fundamental liberty goes far beyond the right of Protestants, Jews and Catholics to build churches, hire clergymen and attend meetings. Many of the ministers who came with the early settlers were itinerants. In fact, calling from house to house was then the only way to build up a congregation. Today, also, that is true.

To go into some building and engage in singing songs or listening to someone address the people is not the only *way* of exercising one's right of worship. Often such is an act of drawing near unto God merely with one's mouth. In this connection it is appropriate to cite the words of the Lord Jesus concerning those who thus attempt to worship God, to wit: "This people draweth nigh unto me with their mouth, and honoureth me with their lips, but their heart is far from me. But in vain they do worship me, [because they are] teaching for doctrines the commandments of men." "Thus have ye made the commandment of God of none effect by your tradition." (Matthew 15: 6, 8, 9) Concerning those who resort to such formalistic practice and call it worship, Jesus Christ's apostle Paul wrote: "Having a form of godliness, but denying the power thereof." (2 Timothy 3:5) Appellant in this case was not haranguing the people, and not disturbing or annoying them. She was quietly calling from house to house at a reasonable hour, respectfully and humbly inviting householders' attention to God's Word, exhibiting to them Bible truths in printed form that they might be aided and comforted in this time of unprecendented distress and perplexity. No one who really believes in righteousness and hates iniquity, violence and oppression should want to interfere with such a noble, laudable and charitable work.

If the State's contention here is to be upheld, then it would mean that a clergyman of any religious denomination calling upon the people by going from house to house

to take a church or parish census or to sell to his parishioners at their homes a new version of the Bible or of a common prayer book, or other religious paraphernalia such as holy candles, rosaries, etc., could not do so without His Honor the Mayor first issuing to him a permit. According to this ordinance such clergyman not only must apply for a permit but must submit testimony as to his good moral character and then leave it to the Mayor to determine whether or not he met the requirements of the ordinance. Such rule has never obtained in any country except a totalitarian state, and certainly could have no application in this "land of liberty".

It is customary for nuns of the Roman Catholic religious organization, in performance of their appointed duties, to call regularly from house to house and solicit and receive from persons money and other contributions. Under the Paris ordinance as applied they must first obtain a permit so to call from house to house. Otherwise, they would be guilty of a misdemeanor.

The religious organization known as the Salvation Army sends its representatives among the people and they call upon them from house to house soliciting contributions and selling their literature. Under the construction placed upon the Paris ordinance by appellee their acts in so doing are in violation of the law.

This is purely prior censorship and absolutely amputates the right of a true follower of Jesus Christ to worship and serve ALMIGHTY GOD as commanded by Him in His written Word, the Bible. We submit that if today the Lord Jesus Christ were on earth in the flesh and went from house to house in the State of Texas as He did in ancient Palestine, He would be liable to be incarcerated because of this ordinance. In times of old the apostles of Jesus Christ likewise went from door to door teaching the people and receiving, simultaneously, valuable things and services from persons of good will toward Almighty God to aid in carrying on the work of preaching God's kingdom mes-

sage. See Luke 8:1, 3; John 4:7, 8; 13:29; Mark 6:37. Now should those apostles be on earth in the flesh and doing this same work in the City of Paris, Texas, they would be liable to be imprisoned, convicted and branded as criminals, as was appellant, solely by reason of the fact that they were humbly and sincerely performing a lawful and beneficial (*to others*) work in the community in compliance with and conscientious obedience to the written commands of Almighty God.

In *Cantwell* v. *Connecticut*, 310 U. S. 296, the statute provided that it was unlawful to solicit for a religious cause or organization unless such cause shall have been approved by the secretary of the public welfare council upon application duly made for permit. It was provided that the permit may be issued if the secretary found that the cause was genuine, free from fraud and a religious one. Mr. Justice Roberts said:

> "We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. . . . The appellants urge that to require them to obtain a certificate as a condition of soliciting support for their views amounts to a prior restraint on the exercise of their religion within the meaning of the Constitution. . . .
>
> "It will be noted, however, that the Act requires an application to the secretary . . . He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth."

To construe the Paris ordinance to cover appellant's activity is equivalent to wording the ordinance so as to read:

> 'All persons receiving money contributions toward preaching the gospel or engaging in acts of worship of Almighty God or in any kind of religious practice must procure a license from the city.'

No reasonable person would suggest that such a law is constitutional. All will admit that such a law would be unconstitutional and reprehensible. Yet if the Court sustains the law here sought to be applied it will in effect do that very evil thing.

The activity of Jehovah's witnesses in distributing Bible literature is admittedly a "religious" rite, i. e., their *way* of disseminating Bible truths—preaching the gospel. Their accepting money contributions, free will offerings, while wholly *incidental* to their primary aim of encouraging recipients of literature to study the printed message, is a necessary integral part of the entire *act of worship* which is protected in the same manner as is the transaction of recognized religious clergymen who solicit money contributions from the pulpit as well as in the homes of the people, both by personal visitation and over the radio.

To permit or to encourage application of this type of ordinance to the activity of preaching by Jehovah's witnesses is to regulate "church" and ultimately permit politicians and others to establish through some such regulation a *state religion*, i. e., by requiring the license; for those not desired by the state would be suppressed and only the one or ones pleasing to the particular factions in power at the time could exist or operate. Thus the people of Paris would be pushed back into the miserable condition of intolerance, lethargy and indolence of the Dark Ages from which founders of this "land of liberty" fled. All tendencies to accomplish a joinder of "church and state", either di-

rectly or indirectly, should be nipped in the bud. The sedulous avoidance by America of any move toward joinder of "church and state" is discussed in the *Encyclopedia Americana*, Vol. 6, pp. 660, 657-659; see, also, *Columbia Encyclopedia* (Columbia University Press); *The Catholic Encyclopedia*, Vol. 14 (1912), pp. 250-253.

The position taken by counsel for the State clearly discriminates in favor of recognized religious clergymen, against the comparatively "poor and weak" witnesses of Jehovah God, preaching in the same humble manner as did the Lord Jesus Christ. This discrimination cannot be screened for long. The fair judicial mind rebels against the arbitrary requirement contained in this ordinance which allows for prohibition and impairment of the spread of the gospel message even though it is controversial and runs counter to established notions of some persons in any community. It should be remembered that Christ Jesus and His apostles were by some despised, hated and persecuted and charged with 'turning the world upside down and refusing to give tribute to Caesar'. (See Luke 23:2; Acts 17:6; 24:5) That charge was FALSELY made by the clergy of the day and their stooges, as the Biblical account, as well as the profane historical account, abundantly proves. Will this Court permit Jesus' footstep followers, Jehovah's witnesses of the present day, to be similarly denied their rights because of *false* charges made against them, notwithstanding THE FACT that the common people today, as in Jesus' day, gladly hear and receive the message brought to them by Jehovah's servants?—Mark 12:37-40.

The best definition of the word "worship" is that given by the Lord Jesus Himself, and which is:

> "God is a spirit, and they that worship him must worship him in spirit and in truth."—John 4:24.

To worship Almighty God in spirit and in truth means to obey His commandments, to serve Him exclusively and

intelligently for advancement of HIS purposes. (Matthew 4:10) The definition of worship is amplified by the *acts* of the Lord Jesus Christ in executing the written commands of His Father, JEHOVAH GOD, and also the like *acts* of the faithful apostles of Jesus Christ. Jehovah's Son, the Lord Jesus, when on earth went about among the people, from house to house and in the public ways or streets, preaching the good news or gospel of God's Kingdom concerning which all God's prophets had in like manner spoken and written from the time of Abel, first of Jehovah's witnesses, murdered by his brother Cain. Apostles of Jesus Christ preached in like manner.—Acts 5:42; 20:20; Hebrews 11:4-40; Revelation 3:20.

It is contended that the words of Jesus, "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's" (Matthew 22:21), mean that a faithful minister of Almighty God should willingly ask for a license to do what God has commanded, when required by men so to do, as in this case. Such interpretation of Jesus' words is *private* (See 2 Peter 1:20) and contrary to the construction placed upon those words by the Most High God Himself. To do an act which results in a violation of the covenant made with Jehovah God to do His will is not a requirement of "Caesar" that can or should be complied with. By recording the course of action of His faithful servants (Hebrews, chapter 11), Almighty God has made clear His true interpretation of the words of Jesus above quoted. That true construction requires all faithful servants of God and His Son Christ Jesus willingly and joyfully to conduct themselves in an upright manner, always doing the will of Jehovah, and obeying every law of the land which is not in conflict with Jehovah's supreme law. This position is exactly like that approved by Blackstone and Cooley. (See Blackstone, *Commentaries*, Chase 3d ed., pp. 5-7; Cooley, *Constitutional Limitations*, 8th ed., p. 968.) The apostles followed boldly in the course of Jesus Christ and were similarly arrested and commanded to

cease preaching. They were mobbed, threatened and beaten for refusing to discontinue their preaching; in court were *falsely* charged with 'turning the world upside down' (Acts 17:6) and 'moving sedition throughout the whole world' (Acts 24:5) by advocating 'a government the king of which is one Jesus'. (Acts 25) They promptly answered their accusers: "We ought to obey God rather than men." (Acts 5:17-41) "Whether it be *right in the sight of God* to hearken unto you more than unto God, judge ye." (Acts 4:19, 20) It is also written concerning those faithful witnesses and servants of Jehovah: " . . . daily in the temple, and in every house, they *ceased not* to teach and preach Jesus Christ." (Acts 5:42) This same reasonable, consistent and God-approved position must be taken today by Jehovah's witnesses.

Until recently a law such as the challenged ordinance, as applied to sincere followers of Jesus Christ, was not dreamed of in America. But since the onrush of totalitarian spirit and of the conspiracy to rule America by dictators many strange and unusual things have come to pass. The dictatorial and totalitarian spirit of alien and pernicious ideologies has struck down the institutions of life and liberty in all the countries of Europe, and is rapidly moving forward even in this country. In this day of dire distress unmatched in human history nothing could be of greater importance than to inform the people of the gracious provisions made by ALMIGHTY GOD for the oppressed, the "refugees" and the poor, and which information can be best transmitted to the people in their homes by means of printed publications carried to them, as appellant was doing. Only the dictators would deprive the people of this information, as in this case.

## TWO

**This court should hold that the ordinance is void and unconstitutional on its face and as construed and applied to appellant's activity because it abridges and censors the exercise by appellant of the rights of freedom of the press and of speech, contrary to the First and Fourteenth Amendments to the United States Constitution.**

The ordinance on its face imposes censorship of the press and of speech equally vicious as the ancient censorship of the press that prevailed in England and later in some of the colonies prior to the American Revolution. See *Near* v. *Minnesota*, 283 U. S. 697. A similar ordinance providing for issuance of a permit from the City Manager of the City of Griffin, Georgia, as a condition precedent to the right to distribute literature in that community was held by this Court to be void on its face and unconstitutional. (*Lovell* v. *Griffin*, 303 U. S. 444) There this Court said: "Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship."

Here the challenged ordinance is not unlike that declared by this Court to be unconstitutional in the *Schneider* case, supra. We submit that the provisions of the Paris ordinance are substantially the same as those of the Connecticut statute this Court declared invalid because providing for *prior censorship* of the exercise of freedom to worship Almighty God in the case of *Cantwell* v. *Connecticut*, 310 U. S. 296.

The Irvington (New Jersey) ordinance provided that no person could canvass, solicit or distribute circulars, or other matter or call from house to house "without first having reported to and received a written permit from the

Chief of Police". There this Court held that the most effective instruments for dissemination of information and opinion were pamphlets and that the most efficient and proper way to distribute them is "at the homes of the people". The ordinance was declared invalid because it provided for and allowed unconstitutional censorship of freedom of the press and speech. *Schneider* v. *State*, 308 U. S. 147.

The Paris ordinance is also similar to that held invalid by the Florida Supreme Court in *State ex rel. Hough* v. *Woodruff*, 147 Fla. 299, 2 S. 2d 577. See also an opinion by the same court in *State ex rel. Wilson* v. *Russell*, 146 Fla. 539, 1 S. 2d 569. Reference is here made to *Borchert* v. *Ranger*, 42 F. Supp. 577. See, also, *Village of South Holland* v. *Stein*, 373 Ill. 472, 26 N. E. 2d 868, where the municipality made it unlawful for anyone to canvass for orders of goods, etc., or solicit or sell merchandise from house to house without obtaining a solicitor's permit from the village board. The Illinois Supreme Court held that the conviction violated the State and Federal Constitutions.

In the recent decision, *Jones* v. *Opelika*, 316 U. S. 584, this Court says:

> "Upon the courts falls the duty of determining the validity of such enactments as may be challenged as unconstitutional by litigants. In dealing with these delicate adjustments this Court denies any place to administrative censorship of ideas or capricious approval of distributors. In *Lovell* v. *Griffin*, 303 U. S. 444, the requirement of permission from the city manager invalidated the ordinance, pp. 447 and 451; in *Schneider* v. *State*, that of a police officer, pp. 157 and 163. In the *Cantwell* case, the secretary of the public council was to determine whether the object of charitable solicitation was worthy, p. 302. We held the requirement bad.
>
> " . . . In *Lovell* v. *Griffin*, 303 U. S. 444, we held in-

> valid a statute which placed the grant of a license within the discretion of the licensing authority. By this discretion, the right to obtain a license was made an empty right."

The license permit provided for in the ordinance in question is expressly condemned in *Near* v. *Minnesota,* 283 U. S. 697, where the challenged statute authorized an injunction by a court against one who had published a libelous, scurrilous, vicious, and immoral publication so as to prevent future injury by future repetition of the same wrong or violation of the privilege and right of freedom of the press. In that case the state argued, as here, that the provision for the injunction (here it is the provision for the license) was solely to prevent the abuse of the right and to protect others from injury. Such argument was strongly answered by this Court in that case. The statute was declared unconstitutional and the injunction dissolved.

This ordinance, when construed so as to cover activity guaranteed by the State and Federal Constitutions against abridgment, presents a serious question. In *Schneider* v. *State,* supra, Mr. Justice Roberts said:

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

In *Hannan* v. *Haverhill* (CCA-1) 120 F. 2d 87, the court said:

> "Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the sale and distribution of literature of the sort offered for sale by the plaintiffs [Jehovah's witnesses]."

It is the construction and application of the ordinance, rather than its cold black-and-white word provisions, that make it unconstitutional. It may be valid when applied to one state of facts and invalid when applied to another. *Whitney* v. *California*, 274 U. S. 357; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282; *South Holland* v. *Stein*, supra; *Concordia Fire Ins. Co.* v. *Illinois*, 292 U. S. 535, 545.

The historical reference to 'pamphlets' in the opinions of the United States Supreme Court in the *Lovell* case above cited, and in the case of *Schneider* v. *State*, supra, is not limited to pamphlets which are distributed without cost. Every student of history knows that the pamphlets referred to were not circulated gratis, but were distributed to subscribers or sold. They "were the immediate predecessors of the weekly newspapers. . . . Under Queen Anne pamphlets arrived at a remarkable degree of importance. Never before or since has this method of publication been used by such masters of thought and language. Political writing of any degree of authority was almost entirely confined to pamphlets. If the Whigs were able to command the services of Addison and Steele, the Tories fought with the terrible pen of Swift." (*Encyclopedia Britannica*, Vol. 20, Pamphlets, pp. 659-660) "The pamphlet is popular as an instrument of religious or political controversy in times of stress. It is relatively inexpensive to the purchaser and to the author or the publisher, it can be more timely than a book bound in cloth or leather, and it gives author and readers the maximum benefit of freedom of the press." (*The Columbia Encyclopedia*, 'Pamphlet') See also *Commonwealth* v. *Reid*, 144 Pa. S. C. 569, 20 A. 2d 841, where the Pennsylvania Superior Court declared an ordinance of similar kind unconstitutional as applied to the work of Jehovah's witnesses.

It is a well-known fact (of which this Court can take judicial notice) that the principal method of circulation and distribution of the large newspapers and national periodicals and magazines, weekly and monthly, is by newsboys

and men, both on the streets and from house to house throughout the entire nation. This is particularly true with respect to *sale* of magazines such as *Collier's, The Ladies Home Journal, The Saturday Evening Post* and *Liberty.* This has been the principal means of distribution of pamphlets, especially since their original use and to this day.

It is utterly ridiculous to conclude or state that the 'taking of funds' for press activity justifies the state in regulating or censoring "the press". If this were true, then every newspaper in the country would have to go bankrupt or else be censored, regulated, controlled and dictated to as they were in the "dark ages" and as they are now regulated in continental Europe. The principle announced by the court below is iniquitous in the extreme. That court has seized upon the "incidental" part of appellant's press activity, namely, 'taking of funds,' and declares *that* activity is subject to regulation and thereby appellant's "predominant activities", namely, press activity and free exercise of the right of worship, the State amputates, takes away, regulates and censors. This is certainly a dangerous fallacy, pernicious, foreign to principles of American liberty, and which should not be permitted to stand. Cf. *Cantwell* v. *Connecticut,* supra; *Tucker* v. *Randall,* 18 N. J. Misc. 675, 15 A. 2d 324.

Moreover, it cannot be reasonably argued that because appellant received money contributions to help partially defray the cost of publishing more like literature she is engaged in a commercial enterprise and thus to be required to obtain a permit on the ground that she is acting as a "peddler" and therefore outside of the protection of free speech and free press afforded by the State and Federal Constitutions. To hold such a doctrine would mean the end of constitutional liberties in this country and would leave the exercise of the four freedoms only to those who are of the *well-to-do* and ultra-rich class who can afford to give away literature free or afford more exclusive means

of dissemination of information, such as the radio, the public press, etc.

Recently the New York Court of Appeals, in *People* v. *Barber* [one of Jehovah's witnesses], considered the effect of the State Constitution upon impairment of these fundamental rights under a license-tax law similar to that sustained by this Court in *Jones* v. *Opelika*, supra. That court held (January 7, 1943) that the New York Constitution did not allow an impairment of civil rights to the extent that this court had gone in the *Opelika* case. Refusal of that court to follow this court on the same question should be persuasive that this court's decision in the *Opelika* case is wrong. Copies of the unanimous opinion of the New York Court of Appeals have been provided to members of this court and here we refer to it.

In the trial court it was argued by the attorney for the state, and it is assumed that the same argument will be made here, that the taking of money contributions constituted a "sale" and brought the transaction within that condemned by the majority opinion of this Court in the *Jones* v. *Opelika* cases. In the court below an attempt was made to distinguish the *Schneider, Cantwell* and *Lovell* decisions on this ground, to wit, the "sale" removed the constitutional protection that was sustained in those cases. It was contended that the facts were different in this case and the *Jones* v. *Opelika* cases. It was contended in the trial court that while the *Constitution* protected the press from license tax (*Grosjean* v. *American Press Co.*, 297 U. S. 233), when literature was "sold" the distributor could be subjected to a license tax because the sale removed the constitutional protection. (*Jones* v. *Opelika*, supra) It was further contended that if the "sale" removed the constitutional protection so as to permit "lawful" abridgment and burden by "license tax" then, by force of reason, the same "*sale*" would remove the constitutional protection so as to sustain prohibition, license, censorship, etc.

The distinction made by this Court's majority opinion

in the *Jones* v. *Opelika* cases between that holding and the *Schneider, Cantwell* and *Lovell* decisions was not sufficiently clear to the judge of the court below who, though not a *licensed attorney* but a *lay preacher* of the Baptist faith, concluded that the *Jones* case nullified said cases as to the case at bar. We assume that if the distinction made therein needs further clarification this Court will announce the same. In effect the trial court held that this Court *dynamited* the constitutional dam of protection and permitted encroachment to flood in upon and thus drown out the "four freedoms" in every case where there is claimed to be a "sale". However, if it is true that this Court held that "sale" of literature removes constitutional protection from license and censorship, then we submit it is *high time* the Court set aside such *Jones* v. *Opelika* decision and hold it *for naught* along with the judgment of the court below.

## THREE

**This court should hold that the ordinance is void and unconstitutional on its face and as construed by the court below because it confers arbitrary, unlimited and discriminatory power and broad discretion upon the Mayor of the City of Paris to refuse or grant permits under the ordinance, thereby allowing the denial of liberty and property contrary to the Fourteenth Amendment to the United States Constitution.**

The decision of this Court in *Yick Wo* v. *Hopkins*, 118 U. S. 356, is the leading authority on this subject. It clearly and definitely decided that an ordinance conferring arbitrary authority upon the mayor to grant or refuse permits for conduct of a laundry business was invalid as denying *equal protection* of the laws, within the Fourteenth Amendment to the United States Constitution. The Court

quoted with approval (at page 372) from a Maryland case, as follows:

> "It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented . . . ; and when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who gives the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

The New Hampshire Supreme Court recently held that a law is invalid when its mandate to an enforcement agency is in such broad terms as to leave the agency of enforcement with unguarded and unrestricted discretion in the assigned field of activity. See the case of *Ferretti* v. *Jackson*, 88 N. H. 296, where this same court had under consideration the Milk Control Act, the conclusions there being as indicated above.

As previously quoted at pages 27 and 28 of this brief, the *Jones* v. *Opelika* case recognized that granting of the license conditioned upon the Mayor's "thorough" investigation in the uncertain and unlimited field as he may desire to act, in effect gives the Mayor uncontrolled power of prohibiting the exercise of constitutional rights. This is the evil of "previous restraint" upon the "sacred rights" guaranteed under the Constitution, which rights have always been unquestionably beyond reach of such censorship.

See footnote 5 of the opinion of Mr. Justice Murphy in the case of *Jones* v. *Opelika*, supra, where it is said:

"When the Opelika ordinance is considered on its face, there is an additional reason for its invalidity. The uncontrolled power of revocation lodged with the local authorities is but the converse of the system of prior licensing struck down in Lovell v. Griffin, 303 U. S. 444. Here, as there, the pervasive threat of censorship inherent in such a power vitiates the ordinance."

The opinion of Chief Justice Stone in *Jones* v. *Opelika*, supra, reads in part as follows:

"It is of no significance that the defendant did not apply for a license. As this Court has often pointed out, when a licensing statute is on its face a lawful exercise of regulatory power, it will not be assumed that it will be unlawfully administered in advance of an actual denial of application for the license. But here it is the prohibition of publication, save at the uncontrolled will of public officials, which transgresses constitutional limitations and makes the ordinance void on its face. The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands. *Lovell* v. *Griffin*, supra, 452-53; *Smith* v. *Cahoon*, 283 U. S. 553, 562. The question of standing to raise the issue in this case is indistinguishable from that in the *Lovell* case, where it was resolved in the only manner consistent with the First Amendment.

"The separability provision of the Opelika ordinance cannot serve, in advance of judicial decision by the state court, to separate those parts which are constitutionally applicable from those which are not. We have no means of knowing that the city would grant any license if the license could not be made revocable at will. The state court applied the ordinance as writ-

ten. It did not rely or pass upon the effect to be given to the separability clause, or determine whether any effect was to be given to it. Until it has done so this Court—as we decided only last Monday—must determine the constitutional validity of the ordinance as it stands and as it stood when obedience to it was demanded and punishment for its violation inflicted. No. 782, *Skinner* v. *Oklahoma*, decided June 1, 1942; *Smith* v. *Cahoon*, supra, 563-64."

We submit that for the above reasons the ordinance is void and on this ground the conviction should be set aside, in accordance with the universal rule respecting any ordinance which is, as here, void on its face.

## FOUR

**This court should hold that under Section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)] the appeal provided for therein from a final judgment of the highest court of Texas in which a decision can be had cannot be refused review by this court until application for writ of habeas corpus is presented and refused by some higher court of Texas.**

At the threshold to consideration of the question of the Court's jurisdiction, which some opine depends upon whether or not the judgment of the court below is subject to further review in a higher court of Texas, this Court is confronted with the proposition that this case comes here by *appeal*, as a matter of right, and not by *petition for writ of certiorari*, the granting of which is discretionary with this Court. In *Philadelphia & Reading Coal & Iron Co.* v. *Gilbert* (1917) 245 U. S. 162, 165, this Court said that

the difference between writ of error, now appeal, provided in the Judicial Code, and *certiorari* "lies in the fact that a writ of error is granted as of right, while a writ of certiorari is granted or refused in the exercise of sound discretion."

Such requirement cannot be insisted upon in the case at bar because—

(1) Appellant is here as a matter of right from the highest court of Texas in which a decision can be had, and

(2) We do not have right of full review of the judgment but only a partial review.

This APPEAL satisfies the requirements of Section 237 (a) of the Judicial Code, 28 U. S. C. A. 344, so as to confer jurisdiction upon this Court to consider the substantial *federal questions* here presented.

By Article 53 of the Texas Code of Criminal Procedure the judgment of the court below is made final in a case of this kind and no further right of appeal to a higher state court is allowed. The Court of Criminal Appeals, in conformity with the mandate and injunction contained in Article 53, has consistently held that a direct appeal does not lie from a judgment of the County Court where the fine imposed on trial *de novo* did not exceed $100 and costs in cases originating in the justice or corporation courts. The judgment of the County Court is final and such court is the *highest court* in which a decision can be had. *Hodge* v. *State*, 137 Tex. Cr. R. 195-6, 128 S. W. 2d 1205; *Phillips* v. *State*, 138 Tex. Cr. R. 9, 133 S. W. 2d 580; *Harlan* v. *State*, 138 Tex. Cr. R. 47, 134 S. W. 2d 289; *Conley* v. *State*, 141 Tex. Cr. R. 478, 149 S. W. 2d 99; *Spann* v. *State*, 161 S. W. 2d 494; and *Ragsdale* v. *State*, 120 Tex. Cr. R. 63, 47 S. W. 2d 278.

Being the highest court in which a decision could be had in this case in the State of Texas, it was not necessary that appellant thereafter begin a new proceeding in some other court to obtain relief from the judgment. In *Gregory* v. *McVeigh*, 23 Wall. 294, 306, a writ of error issued to

the Corporation Court of Alexandria, Virginia. There was a motion to dismiss for want of jurisdiction because, as there alleged by defendant in error, such was not the highest court of the state in which a decision could be had. The writ of habeas corpus was available under Virginia law to the plaintiff in error, but such was not applied for in that case nor did this Court in overruling the motion to dismiss discuss that question. See also *Downham* v. *Alexandria*, 9 Wall. 659, appeal from the District Court, and also *Cohens* v. *Virginia*, 6 Wheat. 264.

In another case originating in Texas, *Grovey* v. *Townsend*, 295 U. S. 45, it was held that this Court had jurisdiction on appeal directly from the justice court. There the plaintiff sued for damages in amount less than $20 for alleged violation of Texas election laws. The statutes of Texas prevented a further appeal to the County Court because the amount sued for did not exceed $20 and costs. It was held that the justice court was the highest court in which a decision could be had in that case in the State of Texas, and for that reason this Court took jurisdiction and decided the case on the merits.

Neither the case of *Tenner* v. *Dullea*, 314 U. S. 585, 692, No. 713 October Term 1941, nor the older case of *Mooney* v. *Holohan*, 294 U. S. 103, 115, gives the theory urged against jurisdiction of this case any comfort or strength in argument. Both of these cases involved "discretionary powers" of this Court. The *Tenner* case was a petition for writ of habeas corpus presented originally to the Superior Court of San Francisco, California. The Constitution, statutes and decisions of California, although denying an appeal from such decision of the Superior Court refusing the application, specifically allow presentation of successive *original* applications for writs to the District Court of Appeals and to the Supreme Court of California where full hearing is allowed on all issues involved. There was no decision or statute which limited the jurisdiction of such courts in habeas corpus as exists

in Texas. The Texas Court of Criminal Appeals denies original habeas corpus jurisdiction in such cases as these. The *Tenner* case was brought to this Court by petition for a *discretionary writ*, the writ of certiorari, and not by appeal. *This case is here on appeal.*

The other ground of distinction is that this is a direct appeal from the judgment of conviction and not an appeal from proceedings which are discretionary, as this Court holds *habeas corpus proceedings* to be.

In the *Mooney* case, supra, the effort was made to apply directly to this Court in an original application for a writ of *habeas corpus* to have this *federal court* relieve the petitioner from the force of a state judgment rendered against him under a state penal statute. His application was addressed to the *sound discretion* of this Court on original motion for leave to file such application. It did not involve a direct appeal from the judgment of conviction. In the exercise of its discretion this Court denied the motion for leave to file on the grounds that Mooney had not invoked the corrective judicial remedy of habeas corpus afforded by the state of California, then open to him. An entirely different proposition is involved in the case at bar. What is here presented is an appeal as a matter of right under an Act of Congress where there is drawn in question the validity of *state legislation* under the Constitution of the United States.

In that case the California courts were open to Mooney to make the same full complaint against the judgment as he was making before this Court on his motion for leave to file petition for writ of habeas corpus. Here there is not claimed to be in Texas a remedy as full as that afforded under the Judicial Code allowing an appeal. At best the most appellee claims available to appellant is the 'narrow way' of procedure, allowing only partial review, before the Court of Criminal Appeals, *as to whether or not the ordinance is void on its face and by its terms.* It is conceded that in the courts of Texas there is no

broader way to review by any process or proceedings the other and more extensive question of whether or not the ordinance is applied so as to abridge and deny appellant's constitutional rights of free speech, press and worship guaranteed by the 1st and 14th amendments.

The *Mooney* and *Tenner* cases are decisively distinguished from the case at bar by this Court in the case of *Edwards* v. *California*, 314 U. S. 160, where this Court entertained a direct appeal from the Superior Court of Yuba County, California. No further appeal was allowed to a higher court of California; however, there was available the remedy of the writ of habeas corpus under the law and practice of California. *California Constitution, Article VI, sections* 1, 4, 4b *and* 5. *Matter of Perkins*, 2 Cal. 424; *California Penal Code*, section 1475, and *Matter of Zaney*, 164 Cal. 724, 727.

In the case of *Kim Young*, appellant, v. The People of the State of California (joined with *Schneider* v. *State* at 308 U. S. 147) appeal was allowed from the Superior Court of Los Angeles County. In that state a writ of habeas corpus could have been applied for to the District Court of Appeals or to the Supreme Court of California, as provided by California statutes. This Court did not discuss the jurisdictional question at length, but said: "The Superior Court of Los Angeles County affirmed the judgment. That court being the highest court in the State authorized to pass upon such a case, an appeal to this court was allowed."

Earlier cases in which this Court entertained writs of error, now appeals, are cited in *Kentucky* v. *Powers*, 201 U. S. 1, and other cases cited at page 2, supra. See also *U. S. C. A. Title* 28 *Section* 344, *note* 32.

Moreover, the rule laid down in the *Mooney* and *Tenner* cases is based merely on considerations of "orderly procedure" and proper exercise of this Court's discretion; but, a mere rule of practice should never be permitted to override a constitutional right or the statutory right

of appeal allowed under the Judicial Code. *Agnello* v. *United States,* 269 U. S. 20.

That this is a final judgment subject to review by this court there can be no doubt, as was held in *Betts* v. *Brady,* 316 U. S. 455, 460-461. There this Court said:

> "It is true that the order was not final, and the petitioner has not exhausted state remedies in the sense that in Maryland, as in England, in many of the states, and in the federal courts, a prisoner may apply successively to one judge after another and to one court after another without exhausting his right. We think this circumstance does not deny to the judgment in a given case the quality of finality requisite to this court's jurisdiction. Although the judgment is final in the sense that it is not subject to review by any other court of the State, we may, in our *discretion,* refuse the writ when there is a higher court of the State to which another petition for the relief sought could be addressed, but this is not such a case."

We submit that this Court should hold that its jurisdiction in the case at bar is not impaired by any such rule advanced by appellee.

Under all the circumstances of this case this Honorable Court should assume jurisdiction. In *Cohens* v. *Virginia* (1821) 6 Wheat. 264, 404, Mr. Chief Justice Marshall said:

> "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exer-

cise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously perform our duty."

## FIVE

**This court should hold that under the law and practice of Texas there was not and is not an opportunity for further full review of the judgment in a higher court of Texas by way of writ of habeas corpus or other proceedings.**

Now we turn to a consideration of the question of whether or not under the law and practice of Texas the judgment can be *fully reviewed* on this record by a higher state court by habeas corpus or other proceedings.

PRIOR to the holding of the Texas Court of Criminal Appeals in the case of *Ex parte Largent*, 162 S. W. 2d 419, it would have been admitted by us that a further review could be had by way of writ of habeas corpus; but *since* such decision, unjustifiably overruling previous holdings allowing a review, it can now be definitely stated that the remedy of habeas corpus in the District Court and Court of Criminal Appeals does not afford appellant a *full review* of the judgment.

The rule adopted by the Court of Criminal Appeals, which must be followed by the district courts, is that in this type of judgment rendered in the county court the inquiry is limited to the one question, to wit, *Is the ordinance unconstitutional and void on its face and by its terms?* If it is not, or if the ordinance is unconstitutional only as enforced and applied, the court cannot grant the writ, and if granted it must be denied. That court says that in this type of judgment it cannot make inquiry into what

facts are involved or whether the undisputed evidence shows that the ordinance does not apply.

That a judgment remanding a relator to custody in a habeas corpus proceeding is a final and appealable judgment within the meaning of the Judicial Code defining this Court's jurisdiction on appeal is too well established to require citation of authority. The fact that cases can be brought here by way of habeas corpus does not deny this Court's right to review directly by appeal or certiorari a conviction in a state court. This Court can review both, but the right to review one does not deny the right to review the other. See *Herndon* v. *Georgia*, 295 U.S. 441, and *Herndon* v. *Lowry*, 301 U.S. 242. Therefore, the fact that this Court considered the case of *Collins* v. *Texas*, 223 U.S. 288, habeas corpus proceedings involving the validity of a proceeding brought in the county court under the Unlawful Medical Practice Act of Texas; and *Tinsley* v. *Anderson*, 171 U.S. 101, a review by habeas corpus of an imprisonment for contempt of the district court, does not impair the jurisdiction of this court in this case.

Where no constitutional question is involved, or conviction is not void, it has been invariably the rule of Texas Court of Criminal Appeals in habeas corpus proceedings not to review a judgment of conviction rendered on trial de novo (on appeal from the Justice or Corporation courts) in the County Court where the fine imposed did not exceed $100 and costs. So to do is held to be employing the writ to do indirectly what is prohibited directly by the Code of Criminal Procedure, Article 53. *Ex parte Kent*, 49 Tex. Cr. R. 12, 90 S. W. 168; *Ex parte Rogers*, 83 Tex. Cr. R. 152, 201 S. W. 1157.

In Texas the writ of habeas corpus is declared to be the principal bulwark of human liberty in that State. *Ex parte Calhoun*, 91 S. W. 2d 1047.

In cases where the petition for writ of habeas corpus was brought for the purpose of reviewing the evidence to determine whether or not it was sufficient, or whether or

not there was evidence to sustain the conviction, the Court of Criminal Appeals universally held to the rule that if there was no constitutional question or if the judgment was not void, it would not review by habeas corpus said judgment of conviction in instances where the case originated in the justice or corporation courts and the fine imposed on trial de novo did not exceed $100 and costs. To do so is held to be employing the writ to do indirectly what is prohibited directly by the Code of Criminal Procedure, Article 53. *Ex parte Kent*, 49 Tex. Cr. R. 12, 90 S. W. 168; *Ex parte Rogers*, 83 Tex. Cr. R. 152, 201 S. W. 1157, and *Ex parte Slawson*, 139 Tex. Cr. R. 607, 141 S. W. 2d 609.

There are many recognized exceptions to the above rule. We now turn to a discussion of the cases recognizing these exceptions for the purpose of showing that the decision of the court in the *Largent* case (162 S. W. 2d 419) is fictitious evasion of a properly raised federal question.

In instances where the Court of Criminal Appeals found the ordinance or statute to be unconstitutional on its face the writ of habeas corpus has been unhesitatingly sustained to release one held under a judgment of conviction in the county court on trial de novo in appeals from the justice and corporation courts. In *Ex parte Patterson*, 42 Tex. Cr. R. 256, 58 S. W. 1011, the ordinance was void on its face because it prohibited a bowling alley within 100 yards of a residence. In *Ex parte Spelce*, 119 S. W. 2d 1037, a Dodd City ordinance prohibiting dance hall within 400 feet of churches was held void on its face. *Ex parte Faulkner*, 158 S. W. 2d 525, holds the "Green River" ordinance of Canyon unconstitutional according to its unreasonable terms. *Ex parte Farnsworth*, 61 Tex. Cr. R. 342, 135 S. W. 535, holds an ordinance of Dallas establishing a commission to fix telephone rates, etc., unconstitutional on its face. In *Ex parte Battis*, 40 Tex. Cr. R. 112, 48 S. W. 513, it was an ordinance prohibiting commercial vehicles for hire from parking on certain downtown streets. *Ex parte Neill*, 32

Tex. Cr. R. 275, 22 S. W. 923, holds void a Seguin ordinance prohibiting sale in the city of a certain newspaper declared a nuisance. In *Ex parte Garza*, 28 Tex. Cr. R. 381, a San Antonio ordinance licensing bawdy houses held void on its face.

Prior to the decision of the Court of Criminal Appeals in *Ex parte Largent*, 162 S. W. 2d 419, it was uniformly held that even though the law be valid on its face, if the statute or ordinance did not apply to the facts in the case the defendant was not guilty and was entitled to a discharge by writ of habeas corpus when convicted on trial de novo in the county court and fined not more than $100. In *Ex parte Roquemore*, 131 S. W. 1101, 60 Tex. Cr. R. 282, the writ was granted to discharge the accused who had been convicted of violating the Sunday Law of Texas. He operated a baseball park and baseball game on Sunday. It was held that the statute when properly construed did not cover the activity of the defendant and on the admitted facts he was not guilty. This case was cited with approval by Judge Hawkins in *Ex parte Jarvis*, 3 S. W. 2d 84. In *Ex parte Jonischkiss*, 227 S. W. 952, 88 Tex. Cr. R. 574, it was held that the writ of habeas corpus was available to release one charged with a violation of a city traffic ordinance where the admitted facts did not constitute a crime under the law of Texas. In *Ex parte Butcher*, 53 S. W. 2d 781, 122 Tex. Cr. R. 39, an application for writ of habeas corpus was granted because the court declared that the operator of a laundry did not come within the provisions of a statute prohibiting labor of females more than 54 hours per week. See also *Ex parte Wall*, 91 S. W. 2d 1065; and *Ex parte Jones*, 81 S. W. 2d 706.

Before the decision in *Ex parte Largent*, supra, it was consistently held by the Court of Criminal Appeals that whether an ordinance is constitutional depends on the facts to which it is applied. During such time that court consistently held that in habeas corpus cases it could not

inquire into and determine whether an ordinance was unconstitutional *as construed and applied* to the undisputed evidence and facts of the case. In *Ex parte Baker*, 127 Tex. Cr. R. 589, 78 S. W. 2d 610, 613, the ordinance fixing fees on non-resident business representatives was held to be arbitrary and violative of the 14th Amendment as applied. The writ of habeas corpus was granted. In that case the court said: "It is a familiar rule that the validity of an act is to be determined not alone by its caption and phraseology, but also by its practical operation and effect." In *Ex parte Lewis*, 45 Tex. Cr. R. 1, 73 S. W. 811, it was held that an ordinance valid on its face was unconstitutional because of the provisions of the city charter which was introduced in evidence. In *Ex parte Mihlfread*, 128 Tex. Cr. R. 556, 83 S. W. 2d 347, it was held that an ordinance providing for the license tax upon certain occupations was void because high, excessive and confiscatory under the circumstances of the case. In *Ex parte Ernest*, 136 S. W. 2d 595, 138 Tex. Cr. R. 441, an ordinance providing for sanitary inspection of bakeries was held valid as applied to institutions within the city but invalid as applied to institutions located outside the city. The court considered the evidence. In *Ex parte Kennedy*, 78 S. W. 2d 627, Judge Hawkins wrote the opinion on rehearing. On the original hearing the ordinance was held to be constitutional on its face and the writ was held properly denied. On rehearing, concerning the relator's attack upon the zoning ordinance the court said: "Relator seems to concede that said case is decisive of the question as to the *general attack* upon the constitutionality of said ordinance, but urges that it should be held unconstitutional, *as it relates to the restriction in the use of the particular property of relator involved in the prosecution.*" The court then inquires into the question as to whether the *valid ordinance* has been applied in an unconstitutional manner, and holds that it is not violative of the Federal Constitution as applied. In *Ex parte Stein*, 135 S. W. 136, 61 Tex. Cr. R. 320, the court inquired into the evidence to determine the

constitutionality of an ordinance. See *Ex parte Degeler*, 17 S. W. 1111, 1114; *Ex parte Kearby*, 34 S. W. 635; 34 S. W. 962; and *Ex parte Dreibelbis*, 133 Tex. Cr. R. 82, 109 S. W. 2d 476.

In his opinion in the *Largent* case Judge Hawkins does not cite or discuss any of the foregoing cases but contents himself with a consideration of the cases originating in the justice or corporation court where there was no constitutional question involved and where habeas corpus was invoked as a substitute for appeal to review the sufficiency of the evidence. *Ex parte Slawson*, 139 Tex. Cr. R. 607, 141 S. W. 2d 609, is said to be controlling. There the defendant was convicted of breaching the peace and contended there was no evidence showing guilt. The case was not within the exception allowing use of the writ in such cases. What was contended in the *Largent* case was that the admitted facts or undisputed evidence showed that relator was not within the terms of the ordinance and if considered within such provisions then such application of the ordinance to the undisputed evidence violated the Federal Constitution.

Concerning the host of cases above enumerated Judge Hawkins in *Ex parte Largent*, supra, says: "If some cases from this court may be found which seem to be in conflict with such holding they are out of harmony with said Art. 53 and the great number of cases construing said article. Either that, or the claimed conflict is more apparent than real." (*Largent* [No. 349 Oct. T. 1942, this Court] R. 27) This shows that the real issue was evaded by that court. The dissenting opinion of Judge Graves in the *Largent* case clearly establishes the fact that the majority holding was fictitious, arbitrary and contrary to the established precedent of Texas.

Unless this Court so holds and reverses the *Largent* case it will be impossible now to say that there is an opportunity for a full review of a judgment of this sort in a higher court of Texas by way of writ of habeas corpus.

Under this type of holding by that court the duty of the state courts to protect citizens from oppressive, discriminatory, burdensome and harsh enforcement of an ordinance so as to abridge the constitutional rights of the citizens *cannot be inquired into on habeas corpus.*

Such a holding therefore makes the United States Supreme Court the only court which can fully review *in one proceeding* ALL questions presented on this appeal.

If we are forced to apply to any of the state courts for further review by a writ of habeas corpus, the court or judge will be confined to considering and determining *whether or not the ordinance on its face violates the federal Constitution;* and then if found valid, an appeal must be taken to the Court of Criminal Appeals. Should that appellate court hold the ordinance valid *on its face* we would have to come to this Court restricted to consideration of the single question, viz., WHETHER THE ORDINANCE ON ITS FACE VIOLATED THE UNITED STATES CONSTITUTION, which is the *only* question the Court of Criminal Appeals says it can consider in habeas corpus proceedings of this kind.

Unless this Court holds that the refusal of the Court of Criminal Appeals, in *Ex parte Largent,* supra, to pass on all constitutional questions presented was a fictitious non-federal disposition to avoid passing on the *real federal question raised,* this Court must, under the rule announced repeatedly, confine its consideration to the federal questions to which the state court restricted its consideration under local procedure in such cases. See *Northw'n Bell Tel. Co. v. Nebr. St. Ry. Com'n,* 297 U. S. 471, 473.

Under such practice, if approved in a case of this kind, when the judgment of the Court of Criminal Appeals is disposed of on *void-on-face question* in this Court, in favor of validity of the law, if we desired to have reviewed the question of whether or not the ordinance is *construed and applied* to the facts and undisputed evidence in such a manner as to violate the Federal Constitution it would

be necessary to go back to the trial court and bring up the judgment of such trial court to this Court directly from the trial court.

This Court has approved the practice of taking a second appeal directly to this Court to review the federal questions raised in the record after a first appeal has been taken to state appellate court on the non-federal questions. (*Kentucky* v. *Powers*, 201 U. S. 1, 37) But this rule would not apply here, for in Texas in this type of case no further appeal lies to a higher court to review the judgment on any question. *Kentucky* v. *Powers*, supra, does not warrant a requirement that a new proceeding must be instituted in the state court by habeas corpus as condition to attempting to secure a review of the judgment by appeal under the Judicial Code.

However, if this honorable court, on consideration of the recent opinion of the Court of Criminal Appeals in the *Largent* case, supra, holds that the doctrine of that court in limiting its consideration to the question of *'unconstitutionality on its face and by its terms'* is an unreasonable abridgment of the right of habeas corpus, or is a fictitious non-federal question decided for the purpose of arbitrarily and evasively considering the federal question of whether the ordinance is unconstitutional as construed and applied, the avenue would then be open to secure a full review of the question by habeas corpus. The Court of Criminal Appeals could then be required to consider all proper federal questions correctly raised in the record.

In such event this Court could review all of the questions raised in the trial court and presented on appeal even though evaded and not passed on by the Court of Criminal Appeals.

SUCH would properly provide a defendant a *full review* of the record of conviction *by habeas corpus* in a higher state court in a case of this kind.

This Court has uniformly denied the doctrine and condemned the practice of bringing litigation from the state courts in sections, divisions, piecemeal or in parcels. A litigant is allowed only one appeal from the same judgment to the same court, in the same proceeding. See *United States* v. *Girault,* 11 How. 22, 32; *Heike* v. *United States,* 217 U. S. 423, 429.

If the doctrine of the state is correct in its attack upon the jurisdiction of this Court in this case, then a new way has been found which will allow *two* appeals to this court, one from the appellate court and another from the trial court, at different times, involving the same record, the same trial, but different judgments. In one it would be the appellate judgment or judgment in the habeas corpus proceeding, and in the other it would be the judgment of conviction rendered in the criminal proceeding originally instituted. This would compel a multiplicity of actions and appeals and be needless circuity of action. In *Carpenter* v. *Longan,* 16 Wall. 271, 21 L. Ed. 313, this Court held that the parties ought not to be driven from one forum to obtain a remedy which cannot be denied in another forum.

In the circumstance that appellant relied upon the *Largent* case (162 S. W. 2d 419) and upon this Court's denial of *certiorari in same it would be unjust and a burdensome imposition to drive appellant back to the courts of Texas to seek relief which can be readily granted here, because, at time of appellant's appeal herein, the doors of such courts were closed to a full review of the judgment by habeas corpus.

Although this Court requested counsel (63 S. Ct. 325) to discuss in their briefs the question as to whether the judg-

* *Largent* v. *Reeves,* No. 349 Oct. T. 1942, ..... U. S. ....., 63 S. Ct. 72, Oct. 19, 1942; rehearing denied Jan. 14, 1943, ..... S. Ct. .....

ment is subject to further *full review* in the courts of Texas, it is noticed here that appellee has wholly failed to enlighten the court on the subject. Appellant has done her best to find and present all Texas cases on the subject so that the court can reach a proper conclusion in the interest of justice.

## CONCLUSION

The court has jurisdiction and the judgment should be reversed.

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES.

No. 559.—October Term, 1942.

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| Daisy Largent, Appellant, *vs.* The State of Texas. | On Appeal from the County Court of Lamar County, Texas. |

[March 8, 1943.]

Mr. Justice Reed delivered the opinion of the Court.

This appeal brings here for review the conviction of appellant for violation of Ordinance No. 612 of the City of Paris, Texas, which makes it unlawful for any person to solicit orders or to sell books, wares or merchandise within the residence portion of Paris without first filing an application and obtaining a permit. The ordinance goes on to provide that

"if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation."[1]

A complaint in the Corporation Court of Paris charged Mrs. Largent, the appellant, with violating this ordinance by unlawfully offering books for sale without making application for a permit. She was convicted and appealed to the County Court of Lamar

[1] The applicable section of the ordinance reads as follows:

"Section 1: From and after the passage of this ordinance it shall be unlawful for any person, firm or corporation to solicit orders for books, wares, merchandise, or any household article of any description whatsoever within the residence portion of the City of Paris, or to sell books, wares, merchandise or any household article of any description whatsoever within the residence district of the City of Paris, or to canvass, take census without first filing an application in writing with the Mayor and obtaining a permit, which said application shall state the character of the goods, wares, or merchandise intended to be sold or the nature of the canvass to be made, or the census to be taken, and by what authority. The application shall also state the name of the party desiring the permit, his permanent street address and number while in the city and if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation."

County, Texas, where a trial de novo was had.[2] There a motion was filed to quash the complaint because the ordinance violated the Fourteenth Amendment to the Constitution of the United States and at the conclusion of the evidence, there was filed a motion on the same grounds for a finding of not guilty and the discharge of the appellant from custody. Both were overruled.

Appellant's evidence shows that she carries a card of ordination from the Watch Tower Bible and Tract Society, an organization incorporated for the purpose of preaching the Gospel of God's Kingdom. The Society is an organization for Jehovah's Witnesses, an evangelical group, founded upon and drawing inspiration from the tenets of Christianity. The Witnesses spread their teachings under the direction of the Society by distributing the books and pamphlets obtained from the Society by house to house visits. They believe that they have a covenant with Jehovah to enlighten the people as to the truths accepted by the Witnesses by putting into their hands, for study, various religious publications with titles such as *Children*, *Hope*, *Consolation*, *Kingdom News*, *Deliverance*, *Government* and *Enemies*.

Mrs. Largent offered some of these books to those upon whom she called for a contribution of not to exceed 25 cents for a bound book and several magazines or tracts. If the contribution was not made, the appellant, in accordance with the custom of the Witnesses, would frequently leave a book and tracts without receiving any money. Appellant was making such distributions when arrested. She had not filed an application for or received a permit under the ordinance.

The Witnesses look upon their work as christian and charitable. To them it is not selling books or papers but accepting contributions to further the work in which they are engaged. The prosecuting officer contended that the offer of the publications and the acceptance of the money was a solicitation or sale of books, wares or merchandise. At the conclusion of the hearing, which was without a jury, the judge found appellant guilty of violating the ordinance of the City of Paris and fined her one hundred dollars

[2] Vernon's Texas St. 1936, Art. 876 (Code of Criminal Procedure), provides: "Appeals from a corporation court shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. In such appeals the trial shall be de novo. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, so far as applicable."

The appeal was brought here under Section 237(a) of the Judicial Code which provides for review of a final judgment of the highest court of a state in which a decision could be had. By our order of December 21, 1942, we requested counsel to discuss whether this judgment could be fully reviewed on this record by a higher state court by habeas corpus or other proceeding. Under the statutes of Texas, no appeal lies from the judgment of the County Court imposing a fine of this amount. Vernon's Texas St. 1936, Article 53 (Code of Criminal Procedure);[3] *Ex parte Largent*, 162 S. W. 2d 419, 421, and cases cited. The appellant, under Texas practice, apparently could test by habeas corpus the constitutionality on its face of the ordinance under which she was convicted but may not use that writ to test the constitutionality of the ordinance as applied to the act of distributing religious literature. Cf. *Ex parte Largent, supra.* Since there is by Texas law or practice, no method which has been called to our attention for reviewing the conviction of appellant, on the record made in the county court, we are of the opinion the appeal is properly here under Section 237(a) of the Judicial Code. The proceeding in the county court was a distinct suit. It disposed of the charge. The possibility that the appellant might obtain release by a subsequent and distinct proceeding, and one not in the nature of a review of the pending charge, in the same or a different court of the State does not affect the finality of the existing judgment or the fact that this judgment was obtained in the highest state court available to the appellant. Cf. *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 14; *Bryant* v. *Zimmerman*, 278 U. S. 63, 70.

Upon the merits, this appeal is governed by recent decisions of this Court involving ordinances which leave the granting or withholding of permits for the distribution of religious publications in the discretion of municipal officers.[4] It is unnecessary to determine whether the distributions of the publications in question are sales or contributions. The mayor issues a permit only if after thorough investigation he "deems it proper or advisable." Dis-

[3] "Court of Criminal Appeals.—The Court of Criminal Appeals shall have appellate jurisdiction co-extensive with the limits of the State in all criminal cases. This article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court or county court at law, in which the fine imposed by the county court or county court at law shall not exceed one hundred dollars."

[4] Lovell v. Griffin, 303 U. S. 444, 447, 451; Schneider v. State, 308 U. S. 147, 157, 163; Cantwell v. Connecticut, 310 U. S. 296, 302.

semination of ideas depends upon the approval of the distributor by the official. This is administrative censorship in an extreme form. It abridges the freedom of religion, of the press and of speech guaranteed by the Fourteenth Amendment.[5]

*Reversed.*

Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

[5] Chaplinsky v. New Hampshire, 315 U. S. 568, 570, 571; Cantwell v. Connecticut, 310 U. S. 296, 303; Gitlow v. New York, 268 U. S. 652.